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mony of plaintiff was admissible that engines drawing freight trains southward threw sparks and coals as they passed his property.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 134.]

2. Appeal and Error (§ 1056 (1)*)—Prejudicial Error—Exclusion of Evidence.—The exclusion of such testimony was prejudicial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 595.]

3. Trial (§ 194 (1)*)—Instruction—Weight of Evidence.—An instruction on the weight and effect of the evidence must be carefully drawn, so as not to invade the jury's province.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 734.]

4. Appeal and Error (§ 1064 (1)*)—Trial—Setting Fire—Instruction—Sufficiency of Evidence.—In an action against a railroad for setting fire to plaintiff's property by its right of way, an instruction that the jury could not presume from the happening of the fire that it was caused by the railroad, in other words, that it was incumbent on plaintiff to show how the fire occurred, and plaintiff could not leave to the jury the determination of the question by conjecture, guess, or random judgment, or upon mere supposition, was erroneous and prejudicial to plaintiff as an instruction that the jury could not presume, from the happening of the fire under the circumstances shown by the evidence for plaintiff, that it was caused by the railroad.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600.]

Error to Circuit Court, Norfolk County.

Action by N. T. Torbert against the Atlantic Coast Line Railroad Company. To review a judgment for defendant, plaintiff brings error. Reversed.

Rumble & Campe, of Norfolk, for plaintiff in error.

William B. McIlwaine and *Bernard Mann*, both of Petersburg, and *Williams, Tunstall & Thom*, of Norfolk, for defendant in error.

BROOKLYN TRUST CO. et al. v. BOOKER, Revenue Com'r.

March 28, 1918.

[95 S. E. 664.]

Taxation (§ 98*)—Choses in Action—Nonresident Trustee.—Where a citizen of Virginia residing in the state has a life estate in choses in action held in trust for him by a nonresident trustee, the state of Virginia can levy a tax on the fund, though the choses in action are not and never have been within Virginia and the trustee has always been a nonresident.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 101.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Elizabeth City County.

Proceedings between the Brooklyn Trust Company and others and one Booker, Commissioner of Revenue. From the judgment, the Brooklyn Trust Company brings error. Reversed.

Jones & Woodward, of Hampton, for plaintiff in error.

The Attorney General, J. D. Hank, Jr., Asst. Atty. Gen., O. L. Shewmake, of Richmond, and *E. E. Montague*, of Hampton, for defendant in error.

CITY OF RICHMOND *v.* O. H. BERRY & CO.

Jan. 17, 1918. Rehearing Denied March 21, 1918.

[95 S. E. 1050.]

Error to Hustings Court of Richmond.

Proceeding by O. H. Berry & Co., against the City of Richmond. To review a judgment for plaintiff, defendant brings error. Reversed.

H. R. Pollard, of Richmond, and *E. P. Buford*, of Lawrenceville, for plaintiff in error.

H. C. Riely and *Hundson Cary*, both of Richmond, and *E. Warren Wall*, of Farmville, for defendant in error.

Reversed without opinion on authority of City of Richmond *v.* Drewry-Hughes Co., 94 S. E. 989.

PLANTERS' BANK OF FARMVILLE *v.* PRINCE EDWARD COUNTY.

June 13, 1918.

[96 S. E. 132.]

Highways (§ 128*)—Road Tax—Exemption of Property within Separate Road District.—Property within the limits of an incorporated town, that constituted a separate tax district and maintained its own streets, is not subject to the road tax imposed by Code 1904, § 944a, cl. 11, as amended by Laws 1915, c. 86; the act exempting from such taxation property within any town that maintains its own streets.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 880; 13 Va.-W. Va. Enc. Dig. 81.]

Error to Circuit Court, Prince Edward County.

Appeal from an order of the Board of Supervisors of Prince Edward County, imposing a road tax upon the property of the

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